

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 74**

4 (By Senator Sypolt)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;  
7 reported February 15, 2013.]  
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11 A BILL to amend and reenact §52-1-5a and §52-1-8 of the Code of  
12 West Virginia, 1931, as amended, all relating to redefining  
13 the basis for disqualification of prospective jurors to  
14 include those who have been convicted of any crime punishable  
15 by imprisonment in excess of one year, perjury or false  
16 swearing.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §52-1-5a and §52-1-8 of the Code of West Virginia, 1931,  
19 as amended, be amended and reenacted, all to read as follows:

20 **ARTICLE 1. PETIT JURIES.**

21 **§52-1-5a. Jury qualification form; contents; procedure for use;**  
22 **penalties.**

23 (a) Not less than twenty days before the date for which  
24 persons are to report for jury duty, the clerk may, if directed by  
25 the court, serve by first class mail, upon each person listed on  
26 the master list, a juror qualification form accompanied by

1 instructions necessary for its completion: *Provided*, That the  
2 clerk may, if directed by the court, mail the juror qualification  
3 form to only those prospective jurors drawn for jury service under  
4 the provisions of section seven of this article. Each prospective  
5 juror shall be directed to complete the form and return it by mail  
6 to the clerk within ten days after its receipt. The juror  
7 qualification form is subject to approval by the circuit court as  
8 to matters of form and shall elicit the following information  
9 concerning the prospective juror:

- 10 (1) The juror's name, sex, race, age and marital status;
- 11 (2) The juror's level of educational attainment, occupation  
12 and place of employment;
- 13 (3) If married, the name of the juror's spouse and the  
14 occupation and place of employment of the spouse;
- 15 (4) The juror's residence address and the juror's mailing  
16 address if different from the residence address;
- 17 (5) The number of children which the juror has and their ages;
- 18 (6) Whether the juror is a citizen of the United States and a  
19 resident of the county;
- 20 (7) Whether the juror is able to read, speak and understand  
21 the English language;
- 22 (8) Whether the juror has any physical or mental disability  
23 substantially impairing the capacity to render satisfactory jury  
24 service: *Provided*, That a juror with a physical disability, who  
25 can with reasonable accommodation render competent service, is  
26 eligible for service;

1 (9) Whether the juror has, within the preceding two years,  
2 been summoned to serve as a petit juror, grand juror or magistrate  
3 court juror, and has actually attended sessions of the magistrate  
4 or circuit court and been reimbursed for his or her expenses as a  
5 juror;

6 (10) Whether the juror has lost the right to vote because of  
7 a criminal conviction; and

8 (11) Whether the juror has been convicted of perjury, false  
9 swearing or ~~other infamous offense~~ any crime punishable by  
10 imprisonment in excess of one year under the applicable law of this  
11 state, another state or the United States.

12 The juror qualification form may also request information  
13 concerning the prospective juror's religious preferences and  
14 organizational affiliations, except that the form and the  
15 accompanying instructions shall clearly inform the juror that this  
16 information need not be provided if the juror declines to answer  
17 such inquiries.

18 (b) The juror qualification form shall contain the prospective  
19 juror's declaration that the responses are true to the best of the  
20 prospective juror's knowledge and an acknowledgment that a willful  
21 misrepresentation of a material fact may be punished by a fine of  
22 not more than \$500 or imprisonment for not more than thirty days,  
23 or both fine and imprisonment. Notarization of the juror  
24 qualification form shall not be required. If the prospective juror  
25 is unable to fill out the form, another person may assist the  
26 prospective juror in the preparation of the form and indicate that

1 such person has done so and the reason therefor. If an omission,  
2 ambiguity or error appear in a returned form, the clerk shall again  
3 send the form with instructions to the prospective juror to make  
4 the necessary addition, clarification or correction and to return  
5 the form to the clerk within ten days after its second receipt.

6 (c) Any prospective juror who fails to return a completed  
7 juror qualification form as instructed shall be directed by the  
8 clerk to appear forthwith before the clerk to fill out the juror  
9 qualification form. At the time of the prospective juror's  
10 appearance for jury service, or at the time of any interview before  
11 the court or clerk, any prospective juror may be required to fill  
12 out another juror qualification form in the presence of the court  
13 or clerk. At that time the prospective juror may be questioned  
14 with regard to the responses to questions contained on the form and  
15 the grounds for the prospective juror's excuse or disqualification.  
16 Any information thus acquired by the court or clerk shall be noted  
17 on the juror qualification form.

18 (d) Any person who willfully misrepresents a material fact on  
19 a juror qualification form or during any interview described in  
20 subsection (c) of this section, for the purpose of avoiding or  
21 securing service as a juror, is guilty of a misdemeanor and, upon  
22 conviction thereof, shall be fined not more than \$500 or imprisoned  
23 not more than thirty days, or both fined and imprisoned.

24 **52-1-8. Disqualification from jury service.**

25 (a) ~~The court upon request of a prospective juror or on its~~  
26 ~~own initiative,~~ shall determine ~~on the basis of information~~

1 ~~provided on the juror qualification form or interview with the~~  
2 ~~prospective juror or other competent evidence whether the any~~  
3 ~~prospective juror is disqualified for jury service on the basis of~~  
4 ~~information provided on the juror qualification form or interview~~  
5 ~~with the prospective juror or other competent evidence.~~ The clerk  
6 shall enter this determination in the space provided on the juror  
7 qualification form and on the alphabetical lists of names drawn  
8 from the jury wheel or jury box.

9 (b) A prospective juror is disqualified to serve on a jury if  
10 the prospective juror:

11 (1) Is not a citizen of the United States, at least eighteen  
12 years old and a resident of the county;

13 (2) Is unable to read, speak and understand the English  
14 language. For the purposes of this section, the requirement of  
15 speaking and understanding the English language is met by the  
16 ability to communicate in American Sign Language or Signed English;

17 (3) Is incapable, by reason of substantial physical or mental  
18 disability, of rendering satisfactory jury service. ~~but~~ A person  
19 claiming this disqualification may be required to submit a  
20 physician's certificate as to the disability and the certifying  
21 physician is subject to inquiry by the court at its discretion;

22 (4) Has, within the preceding two years, been summoned to  
23 serve as a petit juror, grand juror or magistrate court juror and  
24 has ~~actually~~ attended sessions of the magistrate or circuit court  
25 and been reimbursed for his or her expenses as a juror pursuant to  
26 the provisions of section twenty-one of this article, section

1 thirteen, article two of this chapter, or pursuant to an applicable  
2 rule or regulation of the Supreme Court of Appeals promulgated  
3 pursuant to the provisions of section eight, article five, chapter  
4 fifty of this code;

5 (5) Has lost the right to vote because of a criminal  
6 conviction; or

7 (6) Has been convicted of perjury, false swearing or ~~other~~  
8 ~~infamous offense~~ any crime punishable by imprisonment in excess of  
9 one year under the applicable law of this state, another state or  
10 the United States.

11 (c) A prospective juror seventy years of age or older is not  
12 disqualified from serving but shall be excused from service by the  
13 court upon ~~the juror's~~ his or her request.

14 (d) A prospective grand juror is disqualified to serve on a  
15 grand jury if ~~the prospective grand juror~~ he or she is an  
16 officeholder under the laws of the United States or of this state  
17 except that the term "officeholder" does not include notaries  
18 public.

19 (e) A person who is physically disabled and can render  
20 competent service with reasonable accommodation ~~shall not be~~ is not  
21 ineligible to act as juror ~~or~~ and may not be dismissed from a jury  
22 panel on the basis of disability alone. ~~Provided, That~~ The circuit  
23 judge shall, upon motion by either party or upon his or her own  
24 motion, disqualify a disabled juror if the circuit judge finds that  
25 the nature of potential evidence in the case including, but not  
26 limited to, the type or volume of exhibits or the disabled juror's

1 ability to evaluate a witness or witnesses, unduly inhibits the  
2 disabled juror's ability to evaluate the potential evidence. For  
3 purposes of this section:

4 (1) Reasonable accommodation includes, but is not limited to,  
5 certified interpreters for the hearing impaired, spokespersons for  
6 the speech impaired, real-time court reporting and readers for the  
7 visually impaired.

8 (2) The court shall administer an oath or affirmation to any  
9 person present to facilitate communication for a disabled juror.  
10 The substance of ~~such~~ the oath or affirmation shall be that any  
11 person present as an accommodation to a disabled juror will not  
12 deliberate on his or her own behalf, although present throughout  
13 the proceedings, but act only to accurately communicate for and to  
14 the disabled juror.

15 (f) Nothing in this article ~~shall be construed so as to limit~~  
16 ~~in any way~~ limits a party's right to preemptory strikes in civil or  
17 criminal actions.